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UNSTAMPED INSTRUMENTS.

WITH reference to this subject of great and growing importance it is purposed in the present article briefly to notice, in one or two aspects, two leading features, viz.: First, The validity of an unstamped instrument as dependent upon the intent with which the stamp was omitted; and Second, The presumption as to this intent when the fact of the omission, simply, appears.

First. Sect. 158 of the Stamp Act provides: That any person or persons who shall make, sign, or issue, or who shall cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, or shall accept, negotiate, or pay, or cause to be accepted, negotiated, or paid, any bill of exchange, draft or order, or promissory note for the payment of money, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and cancelled in the manner required by law, *with intent to evade the provisions of this act*, shall for every such offence, forfeit the sum of fifty dollars, *and such instrument, document or paper, bill, draft, order, or note, not being stamped according to law, shall be deemed invalid and of no effect.*

That in some cases unstamped instruments are void under this section is clear, but in just what instances depends upon the phrase "such instrument," &c. If these words be construed to have relation to the intent of the party making the omission, then whenever any document appears unstamped its validity depends upon the question whether or not in that particular case

there had been any intention to defraud the government. If, on the other hand, the term applies to every instrument which has not been stamped, then it is the *unstamped* instrument simply which is void. And both these constructions have been adopted by different courts.

Looking at the question outside of the authority of the various decisions, considering the section within itself, a close following of the grammatical rules for the construction of sentences seems to favor the former construction. Yet the true construction of course hinges on the intention of the makers of the act; and this intention should be followed though such construction seem contrary to the strict letter: *Minor* v. *Mechanics' Bank of Alexandria*, 1 Pet. 64; *Wilkinson* v. *Leland*, 2 Id. 622. And statutes of this nature are not penal in the sense that they must be strictly construed, but they are to receive a liberal interpretation to advance the intention: *United States* v. *Twenty-five Cases of Cloth*, Crabbe 356; *Taylor* v. *United States*, 3 How. 197; *Jortin* v. *Southeastern Railway*, 6 De G. M. & G. 270.

We may derive much light on the intended meaning of the section from the way in which it was made up. It is composed of sections 95 and 100 of the original Act of 1862, revised by Act of 1864, and amended by Acts of 1865 and 1866.

Sect. 95 of Act of 1862 provided: That if any person or persons shall make, sign or issue, or cause to be made, signed or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the duty hereby imposed thereon, or without having thereupon an adhesive stamp to denote said duty, such person or persons shall incur a penalty of fifty dollars, and such instrument, document, or paper as aforesaid shall be deemed invalid and of no effect.

Sect. 100 of the same act provided: That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, *with design to evade the payment of any stamp duty*,[1] any bill of

[1] The bill as originally drawn did not contain this clause, but it was inserted in the Senate and House on motion. Mr. Sheffeld, when making the motion in the House, remarked "that it would be very unjust to impose this heavy penalty on a person who might never have read the statute or known of its provisions." See Congressional Globe 1861–2, Part 2, Page 1509.

exchange, draft or order, or promissory note for the payment of money, liable to any of the duties imposed by this act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the duty hereby charged thereon, he, she, or they shall, for every such bill, draft, order, or note, forfeit the sum of two hundred dollars.

In the thorough revision of 1864 these two sections were brought together; doing away with the distinction between the two classes of instruments in the amount of penalty imposed, and making it in all cases the larger sum of two hundred dollars. By the amendmeut of 1865 the penalty was again placed at fifty dollars; and by that of 1866 there was added after the terms "such instrument," &c., the phrase "not being stamped according to law."

It is to be observed with reference to the union of the two sections 95 and 100 in the new section 158, that it is but a re-enactment of the old sections, and should, therefore, carry with it the construction which belonged to them. "It is common learning," says METCALF, J., in *Commonwealth* v. *Hartnett*, 3 Gray 451, "that the adjudged construction of the terms of a statute is enacted as well as the terms themselves, when an act, which has been passed by the legislature of one state or country, is afterwards passed by the legislature of another. So when the same legislature, in a later statute, use the terms of an earlier one which has received a judicial construction, that construction is to be given to the later statute." In changes of this nature the intention to alter the known construction of the old law must plainly appear, the presumption being in favor of the old construction: *McKenzie* v. *The State*, 6 Eng. 594; *Burnham* v. *Stevens*, 33 N. H. 247; *Hughes* v. *Farrar*, 45 Me. 72; *Conger* v. *Barker*, 11 Ohio N. S. 1. And even though alterations may have been made, if terms or phrases are employed which were used in old acts, the same meaning will be given them as in former legislation: *State* v. *Southwaite*, 3 Zabr. 143; *McKee* v. *McKee*, 17 Md. 352; *Myrick* v. *Hasey*, 27 Me. 19; *Whitmore* v. *Rood*, 20 Vt. 49.

The phraseology of the revised sect. 158 was substantially the same as that in the older sects. 95 and 100. The outline of sect. 95 was retained, incorporating within it sect. 100, retaining the heavier penalty and with it its accompanying clause with

reference to intent. Otherwise there was no material change. And can there be any doubt as to the meaning given to the phrase "such instrument," &c., in the earlier legislation? There is no room for any other than this; that *every unstamped* instrument is to be the invalid instrument. "It seems perfectly clear," say the Revenue Department (Dec. No. 34), "that by the provisions of sect. 95 the person who makes, &c., without affixing the stamp, incurs the penalty as aforesaid, and the instrument or document is invalid in consequence of such neglect:" Boutwell's Tax System 234; and again in Ruling No. 302, "On and after June 1st 1863, any instrument executed without the requisite stamp will for that cause be invalid:" Boutwell's Tax System 351.

The legislators plainly had in mind two very distinct ideas: first, that the stamp was to be an essential, legal part of the instrument, and that without it there would be no valid instrument; and second, that the person whose duty it was to affix the proper stamp should render himself liable to a penalty for omitting to discharge this duty, the penalty where heaviest depending upon the intent of the person. In other words, the *intent* was applicable to the *person* and the *penalty* for which he was to be liable, while the *validity* of the instrument was dependent simply upon the question whether it was *stamped or unstamped;* and "such instrument" having reference solely to the unstamped instrument.

Applying, then, the rules of law as above stated, to this revision as it appears in the light of the sections from which it was drawn, and the argument seems strong that the instrument which is unstamped from any cause is invalid. At least if the phraseology be ambiguous, as would appear to be the case from the fact of the conflict between the decisions, the presumption is in favor of such a construction. And, as if to add the legislative sanction to this presumption, the amendment of 1866 makes "such instrument," the one "not being stamped according to law."

And this construction seems to advance the policy of the section in question. Having a stamp act, it should in some way be made effectual. To say that every instrument must be stamped, and then allow that the document is just as good without putting the stamp on, verges on advice more than law. Sect. 158 is to meet this difficulty, and its purpose is to effectually require the affixing of stamps in accordance with the provisions

of the Stamp Act. Prescribing a penalty, as is here done, it is true, meets this in a measure, and yet it does not seem to cover the broad design which Congress had in view, that is, to make the stamp a necessary part of the instrument. This done, every person having any connection with the paper has an interest in seeing that it is properly made out in this respect as with other requirements, as, for example, that a seal should be put on a deed. Making the validity of the instrument depend upon the affixing the stamp required, completely covers the object of the legislature. It was well expressed by Mr. Fessenden, in reply to a question put to him by a member of the Senate: "The Senate will notice with respect to all these instruments which it is provided shall be stamped, that they are of no validity unless the stamp is put on, and therefore the individual who wants his business properly done must see that the stamp is on. * * * It is all provided for by the simple fact that the instrument is of no validity unless the stamp is put on:" Congressional Globe, 1861–2, part 3, Page 2347.

Stamp acts, however, are not the most popular in this country; and it must be admitted that the weight of authority is against this view. On the one hand, that the unstamped instrument is invalid, without reference to the intent, is held in Iowa (*Hugus* v. *Strickler*, 19 Iowa 413); and Nevada (*Maynard* v. *Johnson*, 2 Nev. 25; 2 Id. 16). While on the other hand, that the invalidity depends upon the intention with which the stamp was omitted is held in Vermont (*Hitchcock* v. *Sawyer*, 39 Vt. 412); Massachusetts (*Tobey* v. *Chipman*, *Govern* v. *Littlefield*, *Wiley* v. *Robinson*, 13 Allen 123–8; *Crocker* v. *Foley*, 13 Id. 376; *Holyoke Co.* v. *Franklin Co.*, 97 Mass. 150); New York (*Beebe* v. *Hutton*, 47 Barb. 187; *Vorebeck* v. *Roe*, 50 Id. 302); Pennsylvania (*McGovern* v. *Hosbeck*, 53 Penn. 176); Alabama (*Blunt* v. *Bates*, 40 Ala. 470); Arkansas (*Dorris* v. *Grace*, 25 Ark. 326); California (*Hallock* v. *Jaudin*, 34 Cal. 167).

Second. Assuming that the validity of an unstamped instrument depends upon the intent with which the stamp was omitted, the practical question then often arises; if it appear that an instrument is unstamped, and there is no other evidence with respect to it, what is the presumption as to its validity?

The Supreme Court of Massachusetts in a number of cases have seemed to take the ground that in all such instances it must

be presumed that the stamp was innocently left off, and that the party questioning the validity must show affirmatively, by other evidence, the fraudulent intent. See *Desmond* v. *Norris*, 10 Allen 250; *Snell* v. *Moulton*, 12 Id. 396; *Govern* v. *Littlefield*, 13 Id. 127; *Wiley* v. *Robinson*, 13 Id. 128; *Crocker* v. *Foley*, 13 Id. 376.

With great deference to the intimation from such high authority, to us there seems to be a difficulty in this view, in that by it the act itself is not taken into account. Every man is unquestionably to be presumed innocent till proved guilty; yet if it appear that he has done an unlawful act, we presume him to have intended the natural consequences of that act. In other words the act throws the burden on the defendant to disprove the intent. Thus, in cases of murder, "the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity are to be satisfactorily proved by the prisoner, unless they arise out of the evidence proved against him; for the law presumeth the fact to have been founded in malice until the contrary appeareth:" Foster's Crown Law 255; See *Commonwealth* v. *York*, 9 Met. 93. In cases of malicious prosecution, the want of probable cause depends not upon the actual fact but the belief of the party; yet the *fact* being shown, the belief and malicious intent may be inferred, and "the burden put upon the defendants to rebut this presumption:" *Wills* v. *Noyes*, 12 Pick. 327; 1 Phillips on Ev. 632. And these cases are not favored in law: *Stone* v. *Crocker*, 24 Pick. 83. To constitute the crime of larceny, there must be a taking of property with an intent to appropriate it: *Commonwealth* v. *Adams*, 7 Gray 44; but the possession is *primâ facie* evidence of the intent: *Commonwealth* v. *Willard*, 1 Mass. 6; 1 Phillips on Ev. 634. In cases of false representations, the intention to deceive and defraud must be alleged and proved; but the falsehood uttered is sufficient proof of the intention: 1 Phillips on Ev. 633; and "where a prosecutor, on an indictment for forging a receipt with intent to defraud him, swore that he believed the prisoner had no such intent, the judge directed the jury that the defrauding being the necessary effect and consequence of the forgery, was sufficient evidence of the intent of the prisoner to warrant them in convicting; and the judges held the conviction to be right." (Id. 632.) In the case of *Seymour T. Smith*, bankrupt, Judge HALL, of the United States District

Court Northern District of New York, decided that the making of a general assignment, without preference, by an insolvent debtor, was an act of bankruptcy; that an express denial under oath of intent to defeat or delay the operations of the Bankrupt Act by making such assignment, was of no avail as against the conclusive legal presumption of such intent arising out of the admission of the execution of such assignment: 3 Bankrupt Reg. 98.

Prof. Greenleaf thus lays down the general principle applicable to all cases. "The law presumes every act, in itself unlawful, to have been criminally intended, until the contrary appears:" 1 Greenleaf on Ev. § 34; and this same presumption arises in civil cases: Ibid.

In the case in question, the person who issues an instrument unstamped, in violation of the revenue laws, does an unlawful act of which the natural and necessary consequences are that the provisions of the stamp act are evaded and government defrauded: and why should not this same general principle apply? Granted that the *intent* must be alleged and proved, yet proof of the unlawful act it would seem should make a *primâ facie* case on the question of intent. And such appears to be the view sanctioned by some of the decisions: See *Beebe* v. *Hutton*, 47 Barb. 187.

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THE PROPRIETARY TITLE OF THE PENNS.

As the last of the male descendants of William Penn has recently deceased, it becomes interesting to review the course of transmission of the title to the soil of Pennsylvania, vested in William Penn in fee, by charter of Charles II., dated the 4th of March 1681.

William by his will, after devising ten thousand acres in the province for the three children of his deceased son William, and ten thousand acres for his daughter Aubrey, devised all his lands, tenements, and hereditaments, rents, &c., in Pennsylvania and territories thereunto belonging, or elsewhere in America, unto Hannah his wife and others, and their heirs, in trust, to sell and dispose of so much thereof as might be necessary to pay his